United Nations S/2006/680

Security Council

Distr.: General
21 August 2006

Original: English

Letter dated 17 August 2006 from the Acting Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached sixth report of Brazil submitted pursuant to paragraph 6 of resolution 1373 (2001) as well as Brazil's response to resolution 1624 (2005) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Adamantios Th. **Vassilakis**
Acting Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

06-48231 (E) 041006

Annex

Letter dated 14 August 2006 from the Permanent Mission of Brazil to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

In response to your letter dated 30 March 2006, I have the honour to enclose herewith the sixth report of the Brazilian Government to the Counter-Terrorism Committee, pursuant to resolution 1373 (2001) of the Security Council.

(Signed) Pitágoras **Tarragô**
Ambassador
Acting Permanent Representative of Brazil to the United Nations

Enclosure

Brazil: sixth report to the Counter-Terrorism Committee on the implementation of Security Council resolution 1373 (2001)

1. IMPLEMENTATION MEASURES

1.1 LEGISLATION

1.1 In its third report, Brazil states that it is analyzing certain measures to supplement its federal law, which establishes the financing of terrorism as a crime. The Committee would be grateful for an update on progress in this regard and for clarification as to whether the contemplated provisions would criminalize the supply or collection of funds by Brazil's nationals or in its territory by any person and by any means, whether direct or indirect, with the intention or in the knowledge that these funds are to be used in the commission of terrorist acts.

-Whether or not such acts are actually committed;

-Whether or not the funds are actually used to carry out such acts;

-Whether or not the funds are transferred from one country to another; and

-Even if the funds are legal in origin.

The Brazilian law already criminalizes the financing of terrorism. Law 7170/1983 (National Security Act) establishes as a crime, on article 16, the support to association, party, committee, class entity or group whose goal is to change the current regime or of the Rule of Law, either by violent means or through serious threat. Moreover, Law 9613/1998, on combating money laundering, criminalizes, in article 1, II, the occultation or dissimulation of the nature, origin, location, disposal, movement or property of goods, rights or values proceeding, directly or indirectly, from the crimes of terrorism or its financing.

The National Strategy against Money Laundering (ENCLA), established, in December 2005, a set of goals aimed at the improvement and consolidation of integrated measures for the prevention of and fight against money laundering and terrorism financing. Goal 19 of ENCLA regards the preparation of draft legislation aiming at the improvement of the criminalization of terrorism and of terrorism financing, according to pertinent international instruments and UNSC resolutions.

In this context, the Brazilian Government established a working group for the preparation of the above mentioned draft legislation, under the coordination of the Office of Institutional Security of the Presidency of the Republic. The working group is composed of officials from several ministries directly or indirectly involved in the fight against terrorism and its financing, as well as the Judiciary Branch and the Office of the General Prosecutor of the Republic (Procuradoria Geral da Republica - PGR).

The draft legislation, still under discussion within the Executive Branch, regards the criminalization of the conducts described in the 13 relevant international instruments on terrorism. As far as terrorism financing is concerned, the draft is expected to criminalize the supply or collection of funds, by any means, directly or indirectly, with the intention to use them, or in the knowledge that they are to be used, in full or in part, for the practice of any conduct criminalized as terrorism.

The draft legislation is being prepared according to the international conventions on terrorism. It will therefore address requirements of those instruments, including the hypothesis raised by the Committee in the present questionnaire. When it is concluded, the text of the draft legislation must be submitted to the appreciation of the Congress.

1.2 **With respect to paragraph 1 (c) of resolution 1373 (2001) relating to the freezing of funds and other financial resources, the Committee understands from the fourth and fifth reports that with sufficient evidence, Brazil may seize assets that constitute the proceeds of crime including terrorist acts, and that Brazilian law allows for a provisional remedy by which a court can order the freezing of funds in order to prevent the commission of a crime or at the request of another State. The Committee would like to know whether funds and assets held in Brazil can be frozen:**

-Where their owner is suspected of having links to terrorism, even if the funds or assets are not actually used for the commission of a terrorist act;

The funds can be frozen in this case, provided that it is proved that the assets were destined to an illicit purpose.

-Even if they are legal in origin;

The funds can also be frozen in this case, provided that they are considered as means for the commission of a crime or as having an illicit destination.

-Where their owner's name appears on an international list of persons or entities with links to terrorist activities;

The funds of persons or entities with links to terrorist activities whose names are listed in UNSC resolutions may be frozen by judicial order. Furthermore, the Brazilian government cooperates with countries that keep their own national lists of person and entities with links to terrorist activities.

-On the basis of suspicion and of reports from the Council for Financial Activities Control (COAF), Brazil's financial intelligence unit (FIU); and

COAF reports can be used to start an investigation or be set as a basis for a criminal proceeding. From the results of those, the legal authority in charge of the case may request that the funds be frozen.

-At the request of a State that considers the funds or assets to have links to terrorism.

It is possible to freeze assets at the request of a State, provided that other requirements established in Mutual Legal Assistance Treaties are met.

PROTECTION OF THE FINANCIAL SYSTEM

1.3 **In its third and fourth reports, Brazil indicates that it is considering extending the requirements of customer identification, record keeping and submission of suspicious transaction reports (STRs) to include lawyers, notaries and accountants. The Committee would welcome information on progress in this regard and details of the measures that Brazil has taken or intends to take in order fully to implement paragraph 1 of resolution 1373 (2001).**

A draft statute that revises the law on money laundering (Law 9.613/1998) specifically includes lawyers, notaries and accountants as persons obliged to send reports to the COAF. The draft statute is to be submitted to legislative approval.

1.4 The Committee understands that only authorized entities can offer national and international funds and asset transfer services, including wire transfers. How does Brazil ensure that such services comply with the reporting requirements and are not used for terrorist purposes? The Committee would also like to know what administrative mechanisms are employed to detect and prevent unauthorized or unsupervised entities from operating in Brazil and from transferring funds and assets into and out of the country.

The Brazilian Central Bank has established a specialized anti-money laundering unit (DECIC) in its Supervision Directorate with responsibility for, "inter alia", ensuring the adequacy of financial institutions' anti-money laundering internal control systems and also assessing compliance with AML/CFT legislation.

DECIC conducts periodic on-site AML/CFT inspections of financial institutions under its regulation/supervision, focusing on legal compliance, implementation of AML policies and procedures, the role and organizational position of the compliance officer, and assessment of monitoring and reporting systems.

The transferring of funds by entities that are not authorized by the Brazilian Central Bank is considered a crime by the Brazilian legislation. Its investigation and prosecution have been entrusted to the Federal Police and the Office of the General Prosecutor of the Republic.

EFFECTIVENESS OF INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

1.5 With respect to the implementation of paragraph 3 (a) and (c) of resolution 1373 (2001), the Committee notes that Brazil has signed treaties and agreements on mutual cooperation with States of its region, a number of European States and Japan. The Committee would welcome information on Brazil's plans to conclude treaties and agreements with a larger number of States in order to widen its network of formal relationships and arrangements allowing for expeditious cooperation in the prevention and suppression of terrorist acts.

Bilateral Mutual Legal Assistance Treaties (MLATs) are now in force between Brazil and the following countries: Colombia, France, Italy, Peru, Portugal, South Korea and the United States. In addition, the Protocol on Mutual Legal Assistance in Criminal Matters of the MERCOSUR is also in force between Argentina, Brazil, Paraguay and Uruguay. Bilateral agreements with Angola, Canada, China, Cuba, Switzerland, Suriname and the United Kingdom, as well as the Inter-American Convention on Mutual Assistance in Criminal Matters, are currently under consideration by the Legislative. The treaties concluded with Lebanon and Ukraine are pending on ratification. Brazil has also signed MLATs with Spain and Nigeria, the Convention on Legal Assistance in Criminal Matters of the Community of Portuguese Speaking Countries (CPLP) and the extended MLAT of MERCOSUR, including Bolivia and Chile. Finally, Brazil has concluded negotiations on MLATs with the Bahamas, Hong Kong and Mexico, is currently negotiating treaties with 10 other countries and has sent similar proposals to 25 other States.

EFFECTIVENESS OF CUSTOMS, IMMIGRATION AND BORDER CONTROLS

1.6 Pursuant to paragraph 2 (c) and (g) of resolution 1373 (2001), States should ensure the enforcement of effective immigration, customs and border controls in order to prevent the movement of terrorists, the establishment of safe havens and the commission of terrorist acts. The Committee would be grateful to receive details regarding:

-The extent of cooperation and coordination between the different Brazilian agencies with border control responsibilities, including the modalities and tools used and examples of the results of any joint activity;

-The monitoring strategies and methods used to protect shipments entering and exiting Brazilian territory, using all modes of transport, from acts of terrorism and the steps taken or planned in order to implement the World Customs Organization (WCO) Framework of Standards to Secure and Facilitate Global Trade; and

–The mechanisms and safeguards in place to detect and prevent the movement of terrorists across State borders at crossings where there is no official monitoring.

In Brazil, a consolidated institutional culture of joint operations is already in place. The Brazilian Federal Police Department is in charge of immigration control and border security. It works in cooperation with the Federal Tax Office (Secretaria da Receita Federal – SRF), under whose authority is the Brazilian Customs. The latter is responsible for controlling the flow of goods that enter or leave the Brazilian territory, in harbors, airports and controlled border crossings. Although Customs is the main entity responsible for this surveillance, it relies on the cooperation with other federal agencies such as the Federal Highway Patrol (Polícia Rodoviária Federal – PRF), which provides security support for the fight against smuggling, along with the Ground Transportation National Agency (Agência Nacional de Transportes Terrestres – ANTT), in the control and inspection of cargo and personal vehicles. The Sanitary Surveillance Agency (Agência Nacional de Vigilância Sanitária – ANVISA) is responsible for sanitary regulations enforcement. These agencies interact and complement each other in law enforcement activities, working in their own area of expertise, often participating in joint operations such as the prevention and repression of the illicit trafficking of narcotic drugs, smuggling, embezzlement, counterfeiting, biopiracy, money evasion and illegal entry of currency in the national territory.

Examples of joint operations:

PLATA OPERATION – Conducted in November 2005, in Rio Grande do Sul and São Paulo States, wrecked a criminal organization that used to smuggle products into the country.

CATARATAS OPERATION – Long-term operation (between November 2004 and December 2005), in the Triple Border area (Brazil, Paraguay and Argentina), with a view to combating smuggling, embezzlement and drug trafficking, with the participation of the Federal Tax Office, Federal Police, Federal Road Police and Ground Transportation National Agency, which resulted in the seizure of contraband, illicit guns and some 1500 stolen vehicles, worth over 70 million dollars.

ARMOURED BORDER OPERATION – Given the excellent results of the previous operation, in early 2006 the same agencies started another operation with the same objectives, which has so far surpassed the results of the precedent one by about 50%.

The Federal Tax Office is implementing a National Plan for Customs Modernization, which includes the updating of facilities, acquisition of new equipment, including motor-boats, scanners, aircrafts and other crucial equipment necessary for the improvement of customs activities, employing legally permissible means that make possible a concrete and efficient verification, without causing problems to the normal flow of foreign trade. Federal Tax Office's intelligence groups work alongside the Federal Police and exchange information with the customs services of neighboring countries and throughout the world in order to prevent criminal activities.

In the inspection points for entering and leaving the country, the National System for Wanted or Impeded Persons (SINPI) allows for the consultation of the names of terrorists registered in its database.

In order to detect and prevent the movement of suspicious people as well as to prevent and contain the practice of crimes at ports, waterways and sea, eleven NEPOM's (Special Centers of the Maritime Police) were or are being installed in different States of the Federation. NEPOM's perform the systemic maritime patrolling in port areas and interior waters, aiming at the prevention and repression of crimes and the movement of non-authorized people, supporting the inspection of ships, crew members and passengers. The NEPOM in Foz do Iguaçu, working in cooperation with the Binational Itaipu Hydroelectric Plant, has been effectively patrolling the Itaipu Lake and adjacent waters, at the border between Brazil and Paraguay, and has developed frequent operations that resulted in several apprehensions of smuggled products and narcotics.

As regards air transport, security procedures related to the embarking and disembarking of passengers have been adopted by the Brazilian Federal Police Department, observing the rules of the National Program of the Civil Aviation Security (PNAVSEC), instituted through the Instruction of the Aeronautics Command (ICA) 58-53, which defines the attributions of the Federal Police specifically regarding the practice of illicit acts against the Civil Aviation, established in Annex 17 of the Convention on International Civil Aviation (Convention of Chicago, 1944).

1.7 **Does Brazil have a register for reports of lost or stolen personal and travel documents? Does it exchange this information with other States on a regular basis and, if so, by what means?**

The Brazilian Federal Police uses the National System of Passport (SINPA) that registers data related to lost, stolen or robbed travel documents, from which is elaborated a report that is sent to INTERPOL. The identity documents are issued by the States of the Federation. The creation of a single identity document, under the responsibility of the National Institute of Identification, is under consideration.

1.8 **In the context of the measures established in the International Maritime Organization (IMO) International Ship and Port Facility Security Code (ISPS), the Committee would welcome information on the measures that Brazil has implemented in order to prevent unauthorized access to port facilities and to ships moored at such facilities; the safeguards that Brazil has put in place in order to verify the integrity of staff employed at port facilities and on board ships, both upon hiring and during employment; the steps that Brazil has taken in order to respond to threats to or breaches of the security of port facilities and ship/port interfaces; the exercises that Brazil has conducted in order to test the effectiveness of security measures at port facilities; and the outcome of such drills.**

In Brazil, the National Commission of Public Security in Ports, Terminals and Waterways (Comissão Nacional de Segurança Pública em Portos, Terminais e Vias Navegáveis - CONPORTOS), created by Decree no. 1.507/95 is the Designated Authority to implement the established protection measures for the ISPS Code. CONPORTOS is integrated by five Ministries: Justice, that presides over it, Defense (Navy of Brazil), Finance, External Relations and Transports. The commission was created with the purpose of elaborating and implementing a prevention and repression system against illicit acts in ports, terminals and navigable waters.

There are State Commissions on Public Security in Ports, Terminals and Waterways (CESPORTOS) in the 21 Brazilian States where the port facilities that operate passengers and cargo international maritime traffic are located. CESPORTOS are integrated by representatives of the Department of Federal Police, which coordinates the CESPORTOS in each State, by representatives of the Navy, by members of State Government (Civil and Military Polices and Firemen), and by the Port Authority.

Brazil has so far implemented 220 Port Public Security Plans, in either public ports or private terminals, regarding specific measures prescribed by the ISPS Code, such as: control of people's access, vehicles and cargoes, workers and users control, installation of equipment, magnetic cards, cameras that reach the perimeter of the port facilities, the access gates, the interface port/ship, cargo storage places and units of safety in all port facilities. CONPORTOS adopted 37 resolutions that guide and discipline the implementation of the measures and procedures described in the ISPS Code.

The National Secretariat of Public Security (Secretaria Nacional de Segurança Pública - SENASP) is responsible for the training of the port facilities security officers, whose mission is assisting the port facilities, preparing standard training and promoting a new culture of security that should be established in the country's ports. Since the beginning of the process, 366 port facility security officers have already been trained by SENASP.

As already mentioned in the answer to question 1.6 above, the Department of Federal Police exercises the maritime police. Special Centers of the Maritime Police (NEPOMs) have been reinforced and modernized with the acquisition of new equipment and boats.

In May 2005, in the city of Santos, State of São Paulo, where is located Latin America's largest port, a Port Security Regional Course was offered to the countries of MERCOSUR (Brazil, Paraguay, Argentina, Chile and Uruguay). The event, developed in partnership with the Inter American Counter Terrorism Committee (CICTE/OAS), provided opportunity for exchanging information and experiences on the implementation of the ISPS Code in those countries.

AVIATION SECURITY

1.9 With respect to the standards set forth in Annex 17 to the Convention on International Civil Aviation (ICAO) and listed in Brazil's fourth report, the Committee would welcome information on Brazil's progress in fully implementing standards 2.1.3, 2.3.2, 3.4.1 and 3.4.4.

Brazil has implemented the standards and recommended practices set forth in Annex 17, with the following specific provisions:

Standard 2.1.3: the principles governing measures designed to safeguard against acts of unlawful interference with international civil aviation are applied to all airports with domestic operations involving aircrafts of a maximum certificated take-off mass in excess of 45.500 kg or with a seating capacity over 60 passengers. In airports with domestic operations involving small aircrafts there are security measures to be applied in accordance with their risk assessment developed by the national civil aviation authority.

Standard 2.3.2: Brazil cooperates with other States in relation to national civil aviation security programmes, on the basis of appropriate terms of agreement. The policy adopted by the Government of Brazil is that cooperation in security matters must be attained through the establishment of appropriate frameworks.

Standard 3.4.1: the Brazilian Civil Aviation Authority has adopted this standard within its National Regulation (IAC 107-1006, item 3.7.4) in order to ensure that every person implementing security controls is subject to background checks and selection procedures.

Standard 3.4.4: the Brazilian civil aviation authority has developed and implemented a national programme for controlling the quality of security, in order to ensure the effectiveness of its national civil aviation security programme through inspections, audits, simulation tests and vulnerability studies on a regular basis.

1.10 The Committee notes from the fourth report that Brazil has not been audited by ICAO on the basis of the Universal Security Audit Programme (USAP) of the Aviation Security Plan of Action. The Committee would be interested to know whether such an audit has been conducted in the interim and, if so, what its outcome was. If not, is such an audit being planned?

Brazil has already been audited by ICAO on the basis of the Universal Security Audit Programme (USAP). The audit was conducted from June 27th to July 6th, 2005, at Rio de Janeiro International Airport.

In accordance with ICAO's Technical Report on the audit, the civil aviation authority in Brazil has made notable efforts and has made progress in the application of all standards and recommended practices from Annex 17. It is important to point out that even though Annex 17 stipulates 67 standards, only 20 recommendations were made by the audit team. A follow up audit visit is due to take place in Rio de Janeiro, in 2007.

IMPLEMENTATION OF THE 13 INTERNATIONAL COUNTER-TERRORISM INSTRUMENTS

1.11 The Committee notes that Brazil is a party to 12 international counter-terrorism instruments. The Committee welcomes Brazil's signing of the International Convention for the Suppression of Acts of Nuclear Terrorism and would like to know what steps Brazil plans to take with a view to becoming party to this Convention.

Brazil signed the International Convention for the Suppression of Acts of Nuclear Terrorism on September 16, 2005, on the margins of the High Level Plenary Meeting of the 60th Session of the General Assembly of the United Nations. The Brazilian Government is submitting the Convention's text to the consideration of the legislative, whose approval, according to national law, is a prerequisite for further ratification.

2. IMPLEMENTATION OF RESOLUTION 1624 (2005)

PARAGRAPH 1

2.1 What measures does Brazil have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?

The Brazilian law currently has, in the Penal Code (article 286), a provision which criminalizes the incitement to the commission of any crime in general. The draft legislation regarding the criminalization of terrorism and of the financing of terrorist activities, which is being prepared by the working group referred to in the answer to question 1.1, includes specific criminalization of the incitement of terrorism.

Article 287 of the Penal Code also criminalizes the public apologia (or glorification) of any crime or criminals.

2.2 What measures does Brazil take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?

Immigration authorities have the discretionary power to allow or deny the entrance of anyone in Brazil's national territory. Entrance can be denied if there is reason to believe that a certain person is dangerous or his/her presence is deemed inconvenient to Brazil's national interests. The National System for Wanted or Impeded Persons (SINPI), which is regularly updated by Brazilian security authorities, including with incoming information from international organizations, notably the INTERPOL, is always consulted.

The Brazilian Federal Police Department also exchanges information with several international intelligence and police organizations, concerning people allegedly involved with terrorist activities, which allows for the development of intelligence operations, including the surveillance of such people.

Brazil also relies on databases of suspicious individuals supplied by its own intelligence activities and the exchange of information with foreign intelligence bodies. These databases are usually consulted by Brazilian consular authorities before the issuing of visa for individuals who want to travel to Brazil, if there is any reason to believe that a particular person may be linked to any kind of terrorist activities.

Furthermore, Brazil can provide mutual legal assistance to other countries upon a treaty or on the basis of reciprocity, including by providing assistance to other states to gather evidence for proceedings on incitement to commit an illicit act, without regard to dual incrimination.

PARAGRAPH 2

2.3 How does Brazil cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?

Brazil cooperates with other countries with a view to strengthening the borders' security and preventing the occurrence of transnational crimes, by creating integrated border crossings check-points, for instance in the borders with Paraguay (Foz do Iguaçu – Ciudad del Este), Argentina (São Borja – Uruguaiana) and Uruguay (Santana do Livramento – Chuí). In order to strengthen the security of the Brazilian borders it is being implemented the Program for the Modernization, Improvement and Security of International Traffic Inspection and Brazilian Passport Control – PROMASP, whose main goal is to reduce the occurrence of frauds related to Brazilian passports, considering the rules and international standards of security and reliability specified in the Document 9303 of the ICAO (International Civil Aviation Organization). It is foreseen, for the upcoming months, the implementation of the new International Traffic System, which will effectively contribute to improve control of the entry and departure of people in the country.

In every international airport, sea port with great movement and land border crossings check-points, devices for passport reading will be installed for the automatic registration of migratory movements. Thus, both, foreigners and Brazilian nationals, will have their passports checked when entering or leaving the country. The system will verify the existence of restrictions for the travel document through the consultation to the SINPA (question 1.7). As regards foreign travel documents, the automatic consultation to the SINPI (question 1.6) will be complemented by consultation to the BDFR (Database for Foreign Documents with Restriction), still to be fully implemented.

Brazil does also cooperate with other countries through the sharing of information on flight passenger lists by means of initiatives such as the Passenger Name Record (PNR) and the Advanced Passenger Information (API) and API Plus. Brazil has also signed a series of cooperation agreements with neighbouring countries on the prevention of the traffic of aircrafts involved in illicit activities.

Moreover, Complementary Law 117/2004, which established new subsidiary duties for the Armed Forces, assigned to the Brazilian Army, law enforcement capacity, which will enable it to develop preventive and repressive operations, in the border area, against transnational crimes.

PARAGRAPH 3

2.4 What international efforts is Brazil participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures?

One of the main characteristics of the Brazilian society is its diversity and plurality. Its multiethnic and multicultural composition affords it a remarkable level of political, religious and racial tolerance. The Federal Constitution of Brazil, reflecting that reality, establishes, as one of the guiding principles for its foreign policy – alongside the repudiation of terrorism and racism – the cooperation among the peoples for the progress of humankind.

Brazil supports a genuine dialog among civilizations, in order to avoid stigmatization for ethnic, religious or any other reasons, and to promote tolerance among peoples of different cultures. In the international fora on terrorism in which it participates, Brazil has rejected any analysis based on the stigmatization of any particular group or region. In this context, the Brazilian Government has supported the creation, at the UN, of the High-Level Group for Alliance of Civilizations, in which participates Brazilian Professor Cândido Mendes, Secretary-General of the "Académie de la Latinité".

In addition, Brazil has promoted and supported initiatives such as the South American – Arab Summit, held in Brasília, in May 2005, which contributed for a better mutual knowledge and for the strengthening of cultural, political and economical ties among the countries of both regions.

2.5 What steps is Brazil taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?

The Federal Constitution of Brazil guarantees, among other individual and collective rights, religious freedom. Brazilian authorities do not control the practice of any religion in Brazil.

With regard to educational institutions, the Brazilian educational system is designed to avoid any sort of discriminatory approach. The Ministry of Education establishes a school curriculum and supervises its implementation. Among the various transversal issues emphasized in the curriculum, the promotion of tolerance and non-discrimination deserves special attention.

There is no report of misuse of religious, cultural or educational institutions in Brazil for terrorist or terrorism incitement purposes.

PARAGRAPH 4

2.6 What is Brazil doing to ensure that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all its obligations under international law, in particular international human rights law, refugee law and humanitarian law?

The Federal Constitution of Brazil provides that the country's foreign policy is guided, among others, by the following principles: prevalence of human rights, self-determination of peoples, non-intervention, equality among states and the peaceful settlement of conflicts.

In consonance with those constitutional principles, Brazil has signed all United Nations' conventions on human rights, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which is currently under consideration by competent national authorities. Brazil has also ratified all United Nations' instruments on human rights, with the exception of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was signed on 13 October 2003 and is now under legislative consideration for future ratification.

Brazil has also strongly supported the recent creation of the United Nations Human Rights Council, to which it was elected in latest May, and where the country has reaffirmed its commitment to the promotion and protection of human rights. In the Council, Brazil has also reiterated its understanding that the illegal use of force is not acceptable as a legitimate means for the solution of international conflicts. Brazil believes that any differences among states should be solved through dialog and diplomatic negotiation.

The Brazilian Government has reiterated, in all international and regional fora on terrorism in which it participates, its view that the fight against terrorism must be carried out with the full respect of international law, including human rights law, international refugee law and international humanitarian law.

3. ASSISTANCE AND GUIDANCE

3.1 The Committee wishes to emphasize once more the importance that it attaches to the provision of assistance and advice in connection with the implementation of the resolutions. The Committee's Directory of Assistance (www.un.org/sc/ctc) is frequently updated to include new relevant information on available assistance. The Committee would appreciate receiving updated information from Brazil concerning areas where it might be in a position to provide assistance to other States in relation to the implementation of the resolutions.

Brazil organized, in September 2005, in São Paulo, in cooperation with the Inter American Committee Against Terrorism (CICTE/OAS), the II Expert Meeting on Cyber Security of the Organization of American States. The main objective of the event was to identify the necessary measures to ensure the implementation of the Integral Strategy for Cyber Security proposed by the OAS.

In cooperation with the Financial Action Task Force (FATF), and with the South America Financial Action Task Force on Money Laundering (GAFISUD) the Brazilian Government, through its financial intelligence unit, the COAF (Council for Financial Activities Control), organized, in November 2005, in the city of Rio de Janeiro, a typology exercise with positive results.

As already mentioned in the answer to question 1.8 above, Brazil organized, also in partnership with the CICTE/OAS, in May 2005, in the city of Santos, State of São Paulo, a Port Security Regional Course, for the MERCOSUR countries.

Brazil believes that such initiatives constitute relevant examples of cooperation for the implementation of counter terrorist measures in the countries of the region.

In addition, as pointed out in the answer to question 1.1, the Brazilian Government updates, on an annual basis, the National Strategy against Money Laundering (ENCLA), which addresses counter terrorism financing measures. The ENCLA experience constitutes an interesting model of strategy on this issue, encompassing several bodies and agencies of the three Branches of the State (Legislative, Executive and Judiciary) and the Office of the General Prosecutor of the Republic. This experience could be shared with interested countries.

3.2 Furthermore, in light of the specific areas related to Brazil's implementation of resolution 1373 (2001) outlined in Section 1 of this letter, and based on Brazil's reports to the Committee and on the recent contacts with its representatives, the Committee is aware that the Government of Brazil does not consider itself to be in need of additional technical assistance. However, the Committee assumes that this situation may change in light of the continued dialogue between the Committee and Brazil.

4. ASSISTANCE RECEIVED

4.1 The Committee would be grateful if Brazil would provide it with an update on assistance it has received, or is in the process of receiving, including on whether such assistance has satisfied, or is expected to satisfy, Brazil's needs related to the resolutions.

The Council for Financial Activities Control (COAF), the Brazilian financial intelligence unit (FIU), which is responsible for the monitoring and prevention of possible terrorism financing activities, has received assistance from the United States Government for capacity building programs. COAF has also received assistance from the American FIU (Financial Crimes Enforcement Network – FINCEN) for the improvement of its database and data collection mechanisms. COAF is currently negotiating financial support for technological improvement and capacity building programs with the Inter American Drug Abuse Control Commission (CICAD/OAS), from which it has already received assistance in the past."

United Nations S/2006/681

Security Council

Distr.: General
21 August 2006

Original: English

Letter dated 21 August 2006 from the Acting Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached note verbale from Serbia transmitting the attached fourth report of Serbia and Montenegro submitted pursuant to paragraph 6 of resolution 1373 (2001), as well as Serbia and Montenegro's response to resolution 1624 (2005) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Adamantios Th. **Vassilakis**
Acting Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

06-48219 (E) 041006

Annex

Note verbale dated 31 July 2006 from the Permanent Mission of Serbia to the United Nations addressed to the Counter-Terrorism Committee

The Permanent Mission of the Republic of Serbia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, and with reference to the latter's letter of 20 December 2005 and the Mission's note verbale of 21 March 2006, has the honour to transmit the reply of Serbia and Montenegro concerning the implementation of Security Council resolution 1373 (2001) (see enclosure).

The Permanent Mission regrets that the response is submitted with delay due to technical difficulties.

In addition, it should be noted that the above report refers to the activities of the State Union of Serbia and Montenegro which ceased to exist on 3 June 2006, whereby the Republic of Serbia has continued the international personality of the former State, about which His Excellency Mr. Boris Tadic, President of the Republic of Serbia, informed the Secretary-General in his letter of 3 June 2006.

Enclosure

Report of Serbia and Montenegro on the implementation of Security Council resolution 1373 (2001)

1. Implementation measures

1.1 Regarding the proposed article 155g on 'financing of terrorism' in the Bill on the Amendment of the Criminal Law of the Government of Serbia and Montenegro, and the lack of a specific reference to situations in which no terrorist or criminal act actually occurs, the Committee notes that the International Convention for the Suppression of the Financing of Terrorism has not yet been incorporated into domestic law in Serbia. In this regard, the Committee has received the additional information sent by the Permanent Mission of Serbia and Montenegro to the United Nations enclosed in the letter dated 26 October 2005. However, the Committee considers that shortfall in the criminalization of the financing of terrorism, as described above, remains. Are there plans to incorporate provisions for such cases and, if so, would it be possible to provide to the Committee an estimate of when they might be adopted?

The Republic of Serbia adopted a new Criminal Code (Official Journal of the Republic of Serbia No 85/2005), which began to be implemented on 1 January 2006 and which is the responsibility of the Ministry of Justice. In the new Criminal Code there is a criminal offence of "financing of terrorism" as provided for in article 2, paragraphs 1 and 4 of the International Convention for the Suppression of the Financing of Terrorism.

Regarding the financing of terrorism, article 393 of the Criminal Code (Official Journal of the Republic of Serbia Nos. 85/2005, 88/2005 and 107/2005) stipulates that anyone who provides or collects funds intended for financing the commission of the criminal offences of "terrorism", "international terrorism" and "hostage taking" shall be punished from one to ten years in prison, which means that the perpetrator of the offence of terrorism financing will be punished even if any of the above offences (terrorism, international terrorism and hostage taking) does not occur.

As far as incitement to commit terrorist acts is concerned, article 34 of the Criminal Code provides that anyone who incites another person with the intent to commit a criminal offence shall receive a sentence which such criminal offence carries. Anyone who intentionally incites another person to commit a criminal offence, the attempt of which is punishable by law and which has not actually been attempted, shall be punished as though such a criminal offence has been attempted.

1.2 The Committee would like to point out that, similarly, the legislation concerning terrorist financing under the Criminal Code of Montenegro (articles 447, 448 and 449 of the Criminal Code) deals only with "the commission of criminal acts" (article 449). Article 2, paragraph 3 of the International Convention for the Suppression of the Financing of Terrorism clearly states that for an act to constitute an offence, it is not necessary that the funds actually be used to carry out a terrorist offence. The Committee, once again, would like to acknowledge the additional information sent by Permanent Mission of Serbia and

Montenegro to the United Nations enclosed in the letter dated 26 October 2005. However, the Committee considers that shortfall in the criminalization of the financing of terrorism, as described above, remains in the Criminal Code of Montenegro. Hence the Committee would appreciate receiving information on any steps taken by Montenegro to address this aspect of its legislation.

As already pointed out in the earlier reply submitted by the Permanent Mission of Serbia and Montenegro to the United Nations, dated 26 October 2005, it is stated that the financing of terrorism as referred to in article 449 of the Criminal Code of the Republic of Montenegro has been provided for as a separate criminal offence and that the manner in which this act has been defined as a criminal offence enables it to be viewed in the same way as contained in the relevant provisions of the International Convention for the Suppression of Financing of Terrorism. There is no additional information from the competent Montenegrin ministry on the activities undertaken in Montenegro in this respect.

1.3 Regarding the regulation of alternative financial remittance systems and, in particular, financial transactions performed by intermediaries outside the main financial sector, the Committee understands that, following the adoption of the Constitutional Charter and the abolition of the Ministry of Finance at State Union level, there are still no laws to that effect either in Serbia or Montenegro. Is such legislation being drafted? Could the Government of Serbia and Montenegro please provide a report on the progress made on this issue in both the Republic of Serbia and the Republic of Montenegro?

In the Republic of Serbia there is no legislation related to "alternative financial remittance systems".

In the Republic of Serbia there is a Western Union Service for e-money transfers, which enables persons to receive money from abroad through their agents (commercial banks only). There is no possibility for money transfers from Serbia to foreign countries via Western Union Service.

1.4 The Committee notes that following the adoption of the Constitutional Charter, separate Ministries of Finance and the Economy have assumed responsibility for dealing with money laundering activities in Serbia and Montenegro. The Committee further notes that Serbia inherited the previous Federal Commission (now the Office for the Prevention of Money Laundering Operations) and that Montenegro is establishing a financial intelligence unit (FIU) of its own. Is this unit operational, and could the Government of Serbia and Montenegro please provide a brief outline of its composition and responsibilities?

Based on the Law on the Prevention of Money Laundering, which was passed at the federal level, the Federal Commission for the Prevention of Money Laundering was established and became operational on 1 July 2002. Although the Commission was a federal authority, it did not have competence over the Republic of Montenegro and Kosovo.

After the adoption of the Constitutional Charter, the Commission became a separate body within the Serbian Ministry of Finance, under the name of Administration for the Prevention of Money Laundering. The new Law on the Prevention of Money Laundering came into force on 10 December 2005 and it is in compliance with international standards in this area.

The Serbian Administration for the Prevention of Money Laundering is an administrative FIU. The Administration is authorized to collect, process, analyze and keep the data and information received from obligors and in case the transactions and persons/entities are suspected to be involved in money laundering, to disseminate the data and information to the competent state bodies (police, prosecution office).

As far as the responsibilities carried out by the Republic of Montenegro are concerned, the Law on the Prevention of Money Laundering entered into force on 8 October 2003, while its Administration for the Prevention of Money Laundering was established by the Regulation of the Government of the Republic of Montenegro.

The Administration for the Prevention of Money Laundering is an administrative body of the Government of the Republic of Montenegro and is independent of the Administration for the Prevention of Money Laundering of the Republic of Serbia which is legally the successor to the Federal Administration for the Prevention of Money Laundering.

The relevant State authority responsible for the prevention of money laundering became operational on 5 February 2004, when the Government appointed its Administrator and when it adopted a by-law on the method of providing information on suspect and cash transactions by obligors and on the work of authorized personnel and enforcement of internal audit/control.

The Administration for the Prevention of Money Laundering does not investigate but collects, processes and passes information received from obligors, to the competent State authorities.

The Administration for the Prevention of Money Laundering, in accordance with FATF recommendations, has amended the Law on the Prevention of Money Laundering by incorporating the provisions relating to the prevention of the financing of terrorism and by supplementing the list of obligors with non-profit, non-governmental and charity organisations.

In addition, the Administration for the Prevention of Money Laundering prepares its own data base based on analytical information of all transactions or reports submitted by legal obligors.

Under the regulations in force obligors should regularly check the identity of their clients, both persons and entities, during all transactions performed, and if there is a reasonable suspicion they should suspend such transactions and report it to the Administration for the Prevention of Money Laundering.

The Administration for the Prevention of Money Laundering is in direct contact with the State Prosecutor and the Special Prosecutor, the Ministry of Internal Affairs or the Police Department with a

view to exchaning information and processing data and information gathered operationally or analytically.

1.5 On the subject of legal provisions controlling the import and export of explosives, arms and ammunition that are not intended for use by the armed forces, the Committee notes that the Government of Serbia and Montenegro has decided that the responsibility for licensing, in so far as weapons and military equipment are concerned, will be exercised at the State Union level by a ministry other than the Ministry of Defence (possibly the Ministry of International Relations). Has this decision been taken? If not, the Committee would be grateful to receive details of the relevant provisions currently in effect.

Under article 90, para 2 of the Constitution of the Republic of Serbia in connection with para 1, subpara 2 of the Decision on the obligations of the State authorities of the Republic of Serbia in the excercise of competences of the Republic of Serbia as the successor to the State Union of Serbia and Montenegro (Official Journal of the Republic of Serbia No. 48/06), the Government of the Republic of Serbia issued the Regulation on the financing of the competences transferred from the former Serbia and Montenegro to the Republic of Serbia, by which in article 2, para 4 it is provided that the Republic of Serbia will continue to finance the competencies in the field of foreign sale of arms, military equipment and dual-use goods (controlled goods).

Article 7 provides that the Ministry of Foreign Economic Relations of the Republic of Serbia will take over from the Ministry of International Economic Relations of Serbia and Montenegro the staff needed, as well as the rights, obligations, items, equipment, supplies and archives necessary for the exercise of competences related to the foreign sale of arms, military equipment and dual-use goods (controlled goods).

The State Union Parliament adopted the Law on Foreign Sale of Arms, Military Equipment and Dual-Use Goods on 17 February 2005 (published in Official Gazette of the State Union of Serbia and Montenegro N. 7 and 8/2005). The Law was drafted in cooperation and consultation with representatives of the international community and EU Member States. The Law was assessed as good by the relevant international institutions and their representatives. It aimed at full control over the transfer of weapons, military equipment and dual-use goods (WME/DUG) that might be used for the production of WMD (nuclear, chemical or biological). National WME/DUG watchlists adopted by the Council of Ministers of Serbia and Montenegro constituting an integral part of this Law are fully in conformity with the lists adopted by the EU and the code of conduct of the EU Member States.

As regards WME/DUG export control, buyers, intermediaries and end-users are being strictly scrutinized and evaluated. Special attention is being devoted to the list of countries against which the UNSC has imposed an embargo on the sales and export of WME/DUG. Such dealings with the embargoed countries are strictly forbidden. Restrictions on the transfer of WME/DUG to ECOWAS countries are adhered to (Transfers are allowed only upon EUC agreement and certification by the ECOWAS office). In case of WME/DUG exports, the code of conduct applicable in EU Member States is being respected and complied with.

WME/DUG sales or exports are not permitted to countries seen as either offering sanctuary to criminal groups or sponsoring international terrorism or supporting and assisting it in any other recognizable way. Similarly, WME/DUG exports to countries having shaky regimes and prone to outbreaks of fighting irrespective of the parties being involved, are being carefully considered.

Article 1 of the Law defines terms and conditions under which foreign sale, transport and transit of WME/DUG may take place, defines these notions, establishes the authority responsible for export/import/transport/transit licensing, intermediation and rendering of services in foreing trade, conditions related to licencing, authorisation provided by the authorities in the implementation of the Law, supervision and control as well as penal sanctions imposed in case of violations.

Under article 9 of the Law, foreign sale of watchlist items may take place only if licenced by the Ministry of International Economic Relations of Serbia and Montenegro, or by the Ministry of Foreign Economic Relations of the Republic of Serbia, as stated in the above mentioned Regulation of the Government of the Republic of Serbia.

1.6 Could the Government of Serbia and Montenegro provide an approximate timeline for passage of the draft asylum law?

Among the reforms carried out in the Republic of Serbia concerning the Ministry of Interior, final preparations have been under way for the adoption of laws that are also of relevance for the implementation of the said resolution of the UNSC: the Asylum Law, the Law on the monitoring of the State border and the Law on the Identity Card.

The Asylum Law has been prepared in accordance with international conventions and with the accepted and recognized standards in this field according to the concept that it forms an integral part of the recently adopted Asylum Law of the State Union of Serbia and Montenegro (The Assembly of Serbia and Montenegro adopted the Asylum Law on 21 March 2005, published in the Official Gazette of the State Union of Serbia and Montenegro, 25 March 2005, N[illegible]).

The proposed Asylum Law is before the Parliament and in the final stages of adoption.

1.7 The Committee notes that the Counter-Terrorism Council still operates at the State Union level but that several institutional aspects have changed following the elimination of the Federal Ministry of the Interior and subsequent decentralisation of responsibilities. The Committee would thus appreciate being kept informed of any substantive changes arising from the reconstitution of the Council.

The Government of the Republic of Seriba adopted, on 8 June 2006, the Regulation on the status of individual instutions of the former State Union of Serbia and Montenegro and the services (offices) of the Council of Ministers of Serbia and Montenegro, on the basis of article 90, para 2 of the Constitution of the Republic of Serbia in connection with para 1, subpara 2 of the Decision on the

obligations of the State authorities of the Republic of Serbia in the excercise of the responsibilities of the Republic of Serbia as successor to the State Union of Serbia and Montenegro (Official Journal of the Republic of Serbia No. 48/06). Article 3 of the Regulation acknowledged that all the offices of the Council of Ministers had ceased to exist.

1.8 On the basis of the information provided thus far, it appears that the Government of Serbia and Montenegro is now a party to all the international counter-terrorism instruments with the exception of the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection. The Committee would be grateful to receive an estimated date for the ratification of this remaining convention.

The Convention on the Marking of Plastic Explosives for the Purpose of Detection, done on 1 March 1991, was ratified by the competent authorities of Serbia and Montenegro on 22 October 2005 (Official Gazette of Serbia and Montenegro - International Treaties No. 11/2005 of 22 October 2005).

II. Implementation of resolution 1624 (2005)

In line with operative paragraph 5 of resolution 1624 (2005), that all States report to the Counter-Terrorism Committee on the steps they have taken to implement this resolution, the Government of the Republic of Serbia will provide its reply in twelve months on the implementation of this resolution.

III. Assistance and guidance

3.2. Furthermore, in light of the specific areas related to Serbia and Montenegro's implementation of resolution 1373 (2001) outlined in Section 1 of this letter, and based on Serbia and Montenegro's report to the Committee and on the other relevant information available, including the letter dated 26 October 2005 from Serbia and Montenegro enclosing additional information pertaining to financing of terrorism, the Committee, with assistance from the CTED experts, has conducted a preliminary analysis of Serbia and Montenegro's technical assistance needs in order to identify priority areas in which the Committee believes Serbia and Montenegro may benefit from receiving technical assistance. With the agreement of and in cooperation with the Government of Serbia and Montenegro, the aim is to identify the best possible way for Serbia and Montenegro to benefit from technical assistance in order to strengthen the provision of this resolution.

With regard to combating terrorism financing, the Serbian authority (Administration) plans to establish a project working group consisting of representatives of competent state authorities to make a Law for the Suppression of Terrorism Financing. IMF helped with drafting a document that will

serve as a starting point. The Council of Europe is willing to assist financially and technically the creation of the final version of the Law. It will be a part of the two-year CoE Paco Project.

As for the areas of assistance that you provided, all the topics are welcome and of interest, but there needs to be cooperation with CoE to avoid duplication.